BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of	)	
	)	WC Docket No. 03-171
Core Communications, Inc.	)	
Petition for Forbearance Under	)	
47 U.S.C. § 160(c) from Application of	)	
the ISP Remand Order.	)	

COMMENTS OF TELNET WORLDWIDE, INC.

TelNet Worldwide, Inc., (TelNet), by its attorneys Loomis, Ewert, Parsley, Davis & Gotting, P.C., hereby submits comments in response to Core Communications, Inc.'s *Petition for Forbearance*, WC Docket No. 03-171. TelNet is a facilities-based competitive local exchange carrier (CLEC) operating primarily in Michigan that exchanges a significant volume of ISP-bound traffic. The Federal Communications Commission's (Commission or FCC) *ISP Remand Order*[1] has been detrimental to TelNet's competitive market position and is discriminatory against TelNet. Therefore, TelNet has a direct interest in this proceeding.

1. Introduction

The *ISP Remand Order* is detrimental to the competitive market conditions in the telecommunications industry and is discriminatory to all CLECs. Contrary to any sense of fundamental fairness, the *Order* effectively prohibits a CLEC from receiving compensation for a certain amount of ISP-bound traffic that it terminates. While the imposition of a bill-and-keep regime may be appropriate when two carriers exchange approximately the same amount of traffic, a bill-and-keep regime is neither appropriate nor fair in situations where

[1] *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996* (CC Docket No. 96-98) and *Intercarrier Compensation for ISP-Bound Traffic* (CC Docket No. 99-68), FCC 01-131 (rel. Apr. 27, 2001) (*ISP Remand Order*).

only one of the two carriers have compensable traffic. By definition, only one of the carriers can have traffic in excess of the growth cap. It is blatant discrimination to effectively prevent that carrier from receiving compensation for such traffic.

The *ISP Remand Order* encourages CLECs to either raise prices or drop out of portions of the telecommunications market, two circumstances that are obviously contrary to promoting competitive market conditions. The *ISP Remand Order* also discriminates against CLECs in that it allows incumbent local exchange carriers (ILECs) to invoke the Order's cap in ISP-bound minutes at a later date, in fact, years after its effective date, while requiring that CLECs calculate the growth cap minutes based upon the first quarter of 2001.

All of this harm is caused by an Order that rests on a legal basis that the D.C. Circuit has held to be unsound.[2] The D.C. Circuit remanded the *ISP Remand Order* because the Commission erroneously relied on 47 U.S.C. § 251(g) to set up the bill and keep regime.[3] A Commission Order that causes this amount of harm to competition, and that has had the D.C. Circuit declare its basis to be unlawful, should not continue to operate. Therefore, the Commission should grant Core Communications, Inc.'s Petition and forbear from continued application of the *ISP Remand Order*.

2. The Bill and Keep Requirement of the *ISP Remand Order* is Fundamentally Unfair and Contrary to Promoting Competitive Market Conditions.

One of the three reasons for the Commission to forbear from applying certain regulations or provisions of the Act is when "forbearance . . . is consistent with the public interest."[4] In considering whether forbearance is consistent with the public interest, "the Commission shall consider whether forbearance from enforcing the provision or regulation

[2] WorldCom, Inc. v. FCC, 288 F.3d 429, 430 (D.C. Cir. 2002).
[3] *Id*.
[4] 47 U.S.C. § 160(a)(3).

will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services."[5] The Commission's requirement that compensation for certain ISP-bound traffic be on a bill and keep basis is fundamentally unfair, and is therefore by its nature anti-competitive. It presents a windfall to the ILECs and is discriminatory against CLECs. Consequently, forbearance from this requirement will promote competition and will be in the public interest.

The *ISP Remand Order* sets rate caps for ISP-bound traffic.[6] There is a rebuttable presumption that ISP-bound traffic is the traffic "that exceeds a 3:1 ratio of terminating to originating traffic."[7] In addition to the rate caps, the Commission imposed "a cap on total ISP-bound minutes for which a LEC may receive . . . compensation."[8] The cost of terminating traffic that exceeds this "growth" cap is purportedly recovered on a bill and keep basis. However, in actuality, a carrier that terminates ISP-bound traffic above the growth cap is not compensated at all for that traffic.

With such an acknowledged imbalance between exchanged traffic, fundamental ideas of fairness dictate that a bill and keep regime is not proper here. The Commission acknowledged that it had previously "concluded that state commissions may impose bill and keep arrangements for traffic subject to section 251(b)(5) *only* when the flow of traffic between interconnected carriers is roughly balanced and is expected to remain so."[9] Such a compensation regime makes sense when the traffic between the two carriers is balanced, because "payments from one carrier will be offset by payments from the other carrier."[10]

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[5] 47 U.S.C. § 160(b).
[6] *ISP Remand Order*, ¶ 78.
[7] *Id*. at ¶ 79.
[8] *Id*. at ¶ 78.
[9] *Id*. at ¶ 72.
[10] *Id*.

However, the Commission abruptly changed its position and stated in the *ISP Remand Order* that "we now believe that the Commission's concerns about economic inefficiencies associated with bill and keep missed the mark, particularly as applied to ISP-bound traffic."[11] The Commission further stated that:

> reciprocal compensation [for ISP-bound traffic] encourages carriers to overuse competing carriers' *originating* facilities by seeking customers that *receive* high volumes of traffic. We believe that a bill and keep regime for ISP-bound traffic may eliminate these incentives and concomitant opportunity for regulatory arbitrage by forcing carriers to look only to their ISP customers, rather than to other carriers, for cost recovery.[12]

The Commission established the bill and keep regime for ISP-bound traffic that exceeds the cap to prevent incentives for CLECs to seek out ISP customers. But the prescribed bill and keep regime swings the pendulum too far in the other direction. CLECs that exchange ISP-bound traffic are now penalized for terminating high amounts of ISP-bound traffic and are told that they can not receive compensation for such traffic. This regime does not even feign to be fair. ILECs are still compensated for all of their terminating traffic, while CLECs are prohibited from recovering on a portion of their terminating traffic simply because they have too much of it.

This amounts to a major shift in philosophy regarding the manner in which telecommunications providers bill their customers. The established concept in the telecommunications industry is that landline customers do not pay to receive calls. Instead, it is the party that originates the call that pays for it. The Commission's rules acknowledge this principle: "A LEC may not assess charges on any other telecommunications carrier for

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[11] *Id*. at ¶ 73.
[12] *Id*. at ¶¶ 73-74.

telecommunications traffic that originates on the LEC's network."[13] The Commission expressed the rationale for such a rule:

> In essence, the originating carrier holds itself out as being capable of transmitting a telephone call to any end user, and is responsible for paying the cost of delivering the call to the network of the co-carrier who will then terminate the call. Under the Commission's regulations, the cost of the facilities used to deliver this traffic is the originating carrier's responsibility, because these facilities are part of the originating carrier's network. The originating carrier recovers the costs of these facilities through the rates it charges its own customers for making calls. This regime represents "rules of the road" under which all carriers operate, and which make it possible for one company's customer to call any other customer even if that customer is served by another telephone company.[14]

The bill and keep regime rebels against this standard by requiring CLECs to increase their rates to benefit ILECs. A CLEC should not be required to raise the rates of *its* customers to terminate the traffic of *other* LECs.

This bill and keep regime results in one of two outcomes: (i) the CLEC raising its rates to customers receiving ISP-bound traffic, a prospect that may prove to be competitively disastrous in the face of the rates that other carriers can offer; or (ii) the CLEC deciding that it will terminate less traffic to make sure that it is not subject to the bill and keep regime, thus decreasing the amount of carrier choices for consumers and inhibiting competition. Both of these natural consequences of the bill and keep regime result in *anti*-competitive market conditions.

Such injury to competition is sure to negatively impact the economy nationwide. Service to ISPs is vital to the national economy. Businesses rely heavily on affordable Internet access for their day-to-day operations and, in some cases, for their very existence. Likewise, private individuals use the Internet to freely access the national economy by

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[13] 47 C.F.R. § 51.703(b).
[14] *In re TSR Wireless, LLC v. U S West Communications, Inc.*, FCC-00-194, ¶ 34 (rel. June 21, 2000).

performing such diverse tasks as investing in the stock market, purchasing airline tickets, buying books, and participating in a multitude of other activities that promote a healthy economy. Competition among ISPs is fierce, resulting in lower prices for customers, meaning that more businesses and private individuals have freer access to the Internet and an increased opportunity to participate in the national economy.

However, requiring CLECs to bill their ISP customers for *received* calls, and thereby singling out ISPs among all other landline users for adverse treatment, will mean that costs for Internet access are sure to increase while competition among ISPs is sure to decrease. Higher prices for Internet and reduced ISP competition will have a negative impact on businesses that rely on ISPs, on private individuals who use the Internet to participate in the national economy, and, in turn, on the national economy as a whole. Therefore, the bill and keep regime is against public interest, is *anti*- competitive, and provides a compelling reason for forbearance of the *ISP Remand Order*.

3. If an ILEC Delays in Invoking the Cap on ISP-bound Minutes until July of 2003, the Growth Cap Should Not be based upon the First Quarter of 2001.

Another provision of the *ISP Remand Order* that has anti-competitive consequences is the potential for allowing an ILEC to delay in invoking the cap on ISP-bound minutes for several years, but then, upon invocation, calculate the growth cap based upon the first quarter of 2001. For example, in Michigan, SBC did not invoke the *ISP Remand Order* until June 16, 2003. See Attachment A. This practice results in hardship to the CLECs in that the compensation that they had relied on is abruptly cut off without any transitional period.

The *ISP Remand Order* set growth caps above which a carrier could not receive any compensation for ISP-bound minutes.[15] The 2001 cap was based upon the amount of ISP-

[15] *ISP Remand Order*, ¶ 78.

bound minutes that a carrier terminated under an interconnection agreement for the first quarter of 2001, projected out for the entire year, plus a ten percent growth factor.[16] In 2002, the growth cap was the 2001 cap plus another ten percent. In 2003, the cap is the same as it was in 2002.[17] The problem arises when an ILEC delays in invoking the *ISP Remand Order* and these caps. The *ISP Remand Order* does not address how an ILEC's decision to delay invoking the Order should affect the calculation of the growth cap.

If an ILEC invokes the cap in ISP-bound minutes in 2003, as SBC has done in Michigan, and insists that the CLEC calculate the cap beginning in the first quarter of 2001, then the ILEC has received the benefits of the FCC growth cap without providing full consideration in return. Such a result is contrary to the FCC's ISP traffic compensation regime. The ISP-bound traffic growth caps are to apply only "if an incumbent LEC offers to exchange all traffic subject to 251(b)(5) at the same rate."[18] If an ILEC decides not to exchange 251(b)(5) traffic at the capped rate, the ILEC is required to "exchange ISP-bound traffic at the state-approved or state-arbitrated reciprocal compensation rates reflected in their contracts."[19] An ILEC should not be able to invoke the *ISP Remand Order* and the growth cap in 2003 and require the CLEC's ISP-bound minutes to be capped at an amount that began accumulating in the first quarter of 2001. If the ILEC was not offering to exchange its 251(b)(5) traffic at the capped rates in 2001 and 2002, it seems incredible that when the ILEC does offer to exchange such traffic at the capped rate in 2003, the CLEC must cap its ISP-bound minutes using calculations from those very years where the ILEC made no offer

[16] *Id*.
[17] *Id*.
[18] *Id*. at ¶ 89.
[19] *Id*.

to exchange traffic at the capped rates. This result would provide another windfall to the ILECs.

Allowing such an outcome is discriminatory and damaging to competition because it provides the ILEC with the benefits of the growth caps on ISP-bound minutes without requiring the ILEC to fully meet its end of the bargain. This is another reason for the Commission to forbear from applying the *ISP Remand Order*, or at the very least to forbear from enforcing any provision of the *Order* that would result in such an injustice.

4. A ILEC Should Not be Able to Invoke the Cap in ISP-bound Minutes in July of 2003 While Contending That the CLEC's Capped Minutes Should Begin Accumulating in January of 2003.

If the Commission does not decide to forbear the *ISP Remand Order* in its entirety, and also does not forbear provisions of that Order that requires a CLEC's ISP-bound minutes to be capped using calculations beginning in 2001 when an ILEC first invokes the cap in 2003, then there is another provision of the Order that the Commission should forbear to help encourage competitive market conditions. The Commission should forbear any provision of the *ISP Remand Order* that allows an ILEC to invoke the cap on ISP-bound minutes in July of 2003, but then insist that the CLEC calculate its capped minutes beginning in January of 2003.

This is exactly what SBC is attempting to do in Michigan. SBC has decided to invoke the cap in ISP-bound minutes effective as of July 6th of 2003. However, SBC insists that it should be able to start counting ISP minutes terminated to TelNet as of January 1, 2003. For example, if a CLEC's 2003 growth cap is 1,000 minutes, SBC wants to be able to start counting ISP minutes towards the growth cap on January 1, 2003, even though it did not invoke the *ISP Remand Order* until July 6, 2003. Clearly, SBC is seeking to retroactively apply the *ISP Remand Order*. SBC seeks to avoid offering its 251(b)(5) traffic at the capped rates for the first half of 2003 while requiring TelNet's ISP minutes to accumulate during that time. An ILEC should not be able to start counting minutes toward the cap until the date its invocation of the *ISP Remand Order* becomes effective. The Commission should forbear from applying any provision of the *ISP Remand Order* that provides for such a discriminatory result.

5. Conclusion

For the foregoing reasons, TelNet supports Core Communications, Inc.'s *Petition for Forbearance* and respectfully requests that the Commission grants the Petition or, alternatively, grants TelNet's above requests for forbearance of particular provisions of the *ISP Remand Order*.

August 29, 2003

Respectfully submitted,

TELNET WORLDWIDE

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By: ______________________________

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June 16, 2003

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Re: SBC Michigan Adoption of the FCC's Interim ISP Compensation Order Rate Plan

Dear Sir or Madam:

As provided by the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-bound Traffic* (the "ISP Compensation Order"), which was remanded in *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. 2002), Michigan Bell Telephone Company d/b/a SBC Michigan ("SBC Michigan") has offered to exchange all Section 251(b)(5) and ISP-bound traffic with all Competitive Local Exchange Carriers ("CLECs"), Independent Local Exchange Carriers ("Independents") and CMRS providers in Michigan on or after July 6, 2003 in accordance with the rates, terms and conditions of the FCC's interim ISP terminating compensation plan in the state of Michigan. This offer also may be found in CLEC Accessible Letter CLECAM03-199.

The ISP Compensation Order permits SBC Michigan to incorporate the FCC's interim ISP compensation plan prescribed by the FCC into existing Interconnection Agreements in accordance with the Agreements' change of law provisions, which may also be called "Intervening Law," or "Regulatory Changes," or words to that effect. SBC Michigan hereby invokes its rights under such provisions in our existing Interconnection Agreement to modify the affected rates, terms and conditions of the Interconnection Agreement to reflect SBC Michigan's adoption of the FCC's interim ISP terminating compensation plan in Michigan effective July 6, 2003. This letter constitutes your official written notice of SBC Michigan's invocation of the change of law provision(s) of our Interconnection Agreement to incorporate this change.

In order to document the implementation of the FCC's interim ISP terminating compensation plan in Michigan, SBC Michigan and your company will need to execute a conforming Amendment to our Interconnection Agreement. Accordingly, SBC Michigan proposes the attached ISP-bound Traffic Reciprocal Compensation Amendment to contractualize the adoption of the FCC's interim ISP terminating compensation plan for ISP traffic between our companies.

SBC Michigan has proposed another amendment to contractualize the offer to exchange all Section 251(b)(5) traffic and ISP-bound traffic at the same rates specified in the FCC's ISP Compensation Order. SBC Michigan has offered this alternative amendment for carriers who desire to extend the FCC's interim ISP terminating compensation plan rates to all Section 251(b)(5) traffic and ISP-bound traffic. A draft of this amendment is available on the CLEC Online web site (https://clec.sbc.com/clec/shell.cfm?section=115).

Upon making your amendment selection, accurately complete the enclosed Order Notification Form, fax the completed and signed form to the designated number by July 3, 2003, and execute and return such Amendment to SBC Michigan at the following address: 311 S. Akard, 9th Floor, Dallas, TX 75202. If the executed alternative amendment is received by SBC Michigan on or before July 28, 2003, it will become effective on July 6, 2003, conditioned upon state commission approval; otherwise, it will become effective ten (10) days after approval by the state commission or after it is deemed to have been approved by such commission. In addition, if the executed alternative amendment is not received by SBC Michigan on or before July 28, 2003, the FCC's interim ISP terminating compensation plan rates will not apply to Section 251(b)(5) traffic until ten (10) days after approval by the commission of an amendment extending such rates to all Section 251(b)(5) traffic and all ISP-bound traffic. Once the alternative amendment is executed, the need to revise your current Interconnection Agreement with the attached Amendment will no longer be necessary.

Your company may elect one, but not both, of the proposed alternatives for contractualizing the FCC's ISP Compensation Order. If you have questions or wish to discuss these changes in light of SBC Michigan's decision to invoke the FCC's ISP Compensation Order in Michigan, please contact your assigned SBC Contract Negotiator.

Thank you in advance for your prompt attention to this matter.

Sincerely,

FI Amy Murphy

Eddie A. Reed, Jr.

Enclosure

AMENDMENT TO
INTERCONNECTION AGREEMENT
BY AND BETWEEN
MICHIGAN BELL TELEPHONE COMPANY d/b/a SBC MICHIGAN
AND
CARRIER

The Michigan Bell Telephone Company[1] d/b/a SBC Michigan, as the Incumbent Local Exchange Carrier in Michigan (hereafter, "ILEC" or "SBC Michigan") and CARRIER as a Competitive Local Exchange Carrier ("CLEC"), an Independent Local Exchange Carrier ("Independent") or Commercial Mobile Radio Service ("CMRS") provider in Michigan, (referred to as "CARRIER"), in order to amend, modify and supersede any affected provisions of their Interconnection Agreement with ILEC in Michigan ("Interconnection Agreement"), hereby execute this ISP-Bound Traffic Reciprocal Compensation Amendment (Adopting FCC Interim Terminating Compensation Plan) ("Amendment"). CLEC and Independent are also referred to as a "LEC."

1. Scope of Amendment

   1.1 On or about June 16, 2003, ILEC made an offer to all telecommunications carriers in the state of Michigan (the "Offer") to exchange traffic on and after July 6, 2003 under Section 251(b)(5) of the Act pursuant to the terms and conditions of the FCC's interim terminating compensation plan of the FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27, 2001)) ("FCC ISP Compensation Order") which was remanded but not vacated in *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. 2002).

   1.2 The purpose of this Amendment is to include in CARRIER's Interconnection Agreement the rates, terms and conditions of the FCC's interim ISP terminating compensation plan for the exchange of ISP-bound traffic lawfully compensable under the FCC ISP Compensation Order ("ISP-Bound Traffic").

   1.3 This Amendment is intended to supercede any and all contract sections, appendices, attachments, rate schedules, or other portions of the underlying Interconnection Agreement that set forth rates, terms and conditions for the terminating compensation for ISP-bound Traffic exchanged between ILEC and CARRIER. Any inconsistencies between the provisions of this Amendment and provisions of the underlying Interconnection Agreement shall be governed by the provisions of this Amendment.

2. Rates, Terms and Conditions of FCC's Interim Terminating Compensation Plan

   2.1 ILEC and CARRIER hereby agree that the following rates, terms and conditions shall apply to all ISP-bound Traffic exchanged between the Parties on and after the Effective Date of this Amendment.

   2.2 Reciprocal Compensation Rate Schedule for ISP-bound Traffic:

      2.2.1 The rates, terms, conditions in this section apply only to the termination of ISP-bound Traffic and ISP-bound Traffic is subject to the growth caps and new local market restrictions stated in Sections 2.3 and 2.4 below. Notwithstanding anything contrary in this Amendment, the growth caps in Section 2.3 and the rebuttable presumption in Section 2.6 only apply to LECs.

      2.2.2 The Parties agree to compensate each other for ISP-bound Traffic on a minute of use basis, according to the following rate schedule:

[1] Michigan Bell Telephone Company (Michigan Bell), a Michigan corporation, is a wholly owned subsidiary of Ameritech Corporation, which owns the former Bell operating companies in the States of Michigan, Illinois, Wisconsin, Indiana, and Ohio. Michigan Bell offers telecommunications services and operates under the names "SBC Michigan" and "SBC Ameritech Michigan" (used interchangeably herein), pursuant to assumed name filings with the State of Michigan. Ameritech Corporation is a wholly owned subsidiary of SBC Communications, Inc.

June 15, 2003 and thereafter: .0007 per minute

2.2.3 Payment of Reciprocal Compensation on ISP-bound Traffic will not vary according to whether the traffic is routed through a tandem switch or directly to an end office switch. Where the terminating party utilizes a hierarchical or two-tier switching network, the Parties agree that the payment of these rates in no way modifies, alters, or otherwise affects any requirements to establish Direct End Office Trunking, or otherwise avoids the applicable provisions of the Interconnection Agreement and industry standards for interconnection, trunking, Calling Party Number (CPN) signaling, call transport, and switch usage recordation.

2.3 ISP-bound Traffic Minutes Growth Cap

2.3.1 On a calendar year basis, as set forth below, LEC and ILEC agree to cap overall compensable Michigan ISP-bound Traffic minutes of use in the future based upon the 1st Quarter 2001 ISP-bound Traffic minutes for which LEC was entitled to compensation under its Michigan Interconnection Agreement(s) in existence for the 1st Quarter of 2001, on the following schedule.

Calendar Year 2001	1st Quarter 2001 compensable ISP-bound minutes, times 4, times 1.10
Calendar Year 2002	Year 2001 compensable ISP-bound minutes, times 1.10
Calendar Year 2003	Year 2002 compensable ISP-bound minutes
Calendar Year 2004 and on	Year 2002 compensable ISP-bound minutes

Notwithstanding anything contrary herein, in Calendar Year 2003, LEC and ILEC agree that ISP-bound Traffic exchanged between LEC and ILEC during the entire period from January 1, 2003 until December 31, 2003 shall be counted towards determining whether LEC has exceeded the growth caps for Calendar Year 2003.

2.3.2 ISP-bound Traffic minutes that exceed the applied growth cap will be Bill and Keep. "Bill and Keep" refers to an arrangement in which neither of two interconnecting Parties charges the other for terminating traffic that originates on the other network; instead, each Party recovers from its end-users the cost of both originating traffic that it delivers to the other Party and terminating traffic that it receives from the other Party.

2.4 Bill and Keep for ISP-bound Traffic in New Markets

2.4.1 In the event CARRIER and ILEC have not previously exchanged ISP-bound Traffic in any one or more Michigan LATAs prior to April 18, 2001, Bill and Keep will be the reciprocal compensation arrangement for all ISP-bound Traffic between CARRIER and ILEC for the remaining term of this Agreement in any such Michigan LATAs.

2.4.2 In the event CARRIER and ILEC have previously exchanged traffic in an Michigan LATA prior to April 18, 2001, the Parties agree that they shall only compensate each other for completing ISP-bound Traffic exchanged in that Michigan LATA, and that any ISP-bound Traffic in other Michigan LATAs shall be Bill and Keep for the remaining term of this Agreement.

2.4.3 Wherever Bill and Keep is the traffic termination arrangement between CARRIER and ILEC, both Parties shall segregate the Bill and Keep traffic from other compensable local traffic either (a) by excluding the Bill and Keep minutes of use from other compensable minutes of use in the monthly billing invoices, or (b) by any other means mutually agreed upon by the Parties.

2.5 The Growth Cap and New Market Bill and Keep arrangement applies only to ISP-bound Traffic, and does not include Transit traffic, Optional Calling Area traffic, IntraLATA Interexchange traffic, or InterLATA Interexchange traffic.

2.6 ISP-bound Traffic Rebuttable Presumption

In accordance with Paragraph 79 of the FCC's ISP Compensation Order, LEC and ILEC agree that there is a rebuttable presumption that any of the combined Section 251(b)(5) Traffic and ISP-bound traffic exchanged between LEC and ILEC exceeding a 3:1 terminating to originating ratio is presumed to be ISP-bound Traffic subject to the compensation and growth cap terms in this Section 2.0. Either party has the right to rebut the 3:1 ISP presumption by identifying the actual ISP-bound Traffic by any means mutually agreed by the Parties, or by any method approved by the Commission. If a Party seeking to rebut the presumption takes appropriate action at the Commission pursuant to section 252 of the Act and the Commission agrees that such Party has rebutted the presumption, the methodology and/or means approved by the Commission for use in determining the ratio shall be utilized by the Parties as of the date of the Commission approval and, in addition, shall be utilized to determine the appropriate true-up as described below. During the pendency of any such proceedings to rebut the presumption, LEC and ILEC will remain obligated to pay the presumptive rates (reciprocal compensation rates for traffic below a 3:1 ratio, the rates set forth in Section 2.2.2 for traffic above the ratio) subject to a true-up upon the conclusion of such proceedings. Such true-up shall be retroactive back to the date a Party first sought appropriate relief from the Commission.

3.0 Reservation of Rights

3.1 ILEC and CARRIER agree that nothing in this Amendment is meant to affect or determine the appropriate treatment of Voice Over Internet Protocol (VOIP) traffic under this or future Interconnection Agreements. The Parties further agree that this Amendment shall not be construed against either party as a "meeting of the minds" that VOIP traffic is or is not local traffic subject to reciprocal compensation. By entering into the Amendment, both Parties reserve the right to advocate their respective positions before state or federal commissions whether in bilateral complaint dockets, arbitrations under Section 252 of the Act, commission established rulemaking dockets, or before any judicial or legislative body.

4.0 Miscellaneous

4.1 This Amendment will be effective on July 6, 2003 ("Effective Date"), and will apply to all ISP-bound Traffic exchanged between ILEC and CARRIER on and after that date, contingent upon any necessary commission approval of the Amendment.

4.2 To the extent that compensation for intercarrier traffic on or after July 6, 2003 was already billed and/or paid prior to the time that the state commission approved this Amendment, the Parties agree to implement any adjustments, reimbursements, or other "true ups" necessary to make the rates and terms set forth in this Amendment effective for all traffic terminated on and after July 6, 2003.

4.3 This Amendment is coterminous with the underlying Interconnection Agreement and does not extend the term or change the termination provisions of the underlying Interconnection Agreement.

4.4 EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING INTERCONNECTION AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.

4.5 Every rate, term and condition of this Amendment is legitimately related to the other rates, terms and conditions in this Amendment. Without limiting the general applicability of the foregoing, the change of law provisions of the underlying Interconnection Agreement, including but not limited to the "Intervening Law" or "Change of Law" or "Regulatory Change" section of the General Terms and Conditions of the Interconnection Agreement and as modified in this Amendment, are specifically agreed by the Parties to be legitimately related to, and inextricably intertwined with this the other rates, terms and conditions of this Amendment.

4.6 In entering into this Amendment, the Parties acknowledge and agree that neither Party is waiving any of its rights, remedies or arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof, including but not limited to its rights under the United States Supreme Court's opinion in *Verizon v. FCC, et al*, 535 U.S. 467 (2002); the D.C. Circuit's decision in *United States Telecom Association, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA* decision"); the FCC's Triennial Review Order, adopted on February 20, 2003, on remand from the *USTA* decision and pursuant to the FCC's Notice of Proposed Rulemaking, *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 (FCC 01-361) (rel. Dec. 20, 2001); the FCC's Order *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 1760 (FCC 99-370) (rel. Nov. 24, 1999), including its Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27,

2001) ("ISP Compensation Order"), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002); or the Public Utilities Act of Illinois, which was amended on May 9, 2003 to add Sections 13-408 and 13-409, 220 ILCS 5/13-408 and 13-409, and enacted into law ("Illinois Law"). On May 9, 2003, the Public Utilities Act of Illinois was amended to add Sections 13-408 and 13-409, 220 ILCS 5/13-408 and 13-409, and enacted into law ("Illinois Law"). The Illinois Law establishes a specific method for setting certain UNE rates in Illinois, mandates that the Illinois Commerce Commission ("ICC") apply the method and determine the rates ("ICC Rates"), and expressly deems all interconnection agreements to be amended to contain the ICC Rates immediately upon the ICC's announcement of such adjusted rates, without further action. Rather, in entering into this Amendment, each Party fully reserves all of its rights, remedies and arguments with respect to any decisions, orders or proceedings and the Illinois Law, including but not limited to its right to dispute whether any UNEs and/or UNE combinations identified in the Agreement and this Amendment must be provided under Sections 251(c)(3) and 251(d) of the Act, and under this Agreement. Notwithstanding anything to the contrary in this Agreement and in addition to fully reserving its other rights, SBC Michigan reserves its right, to the extent SBC Michigan has not already invoked the FCC ISP terminating compensation in SBC Michigan and incorporated the rates, terms and conditions of such plan into this Agreement, to exercise its option at any time to adopt on a date specified by SBC Michigan the FCC ISP terminating compensation plan, after which date ISP-bound traffic will be subject to the FCC's prescribed terminating compensation rates, and other terms and conditions, and seek conforming modifications to this Agreement. In the event that a state or federal regulatory or legislative body or a court of competent jurisdiction, in any proceeding, finds, rules and/or otherwise orders that any of the UNEs and/or UNE combinations provided for under this Agreement and this Amendment do not meet the necessary and impair standards set forth in Section 251(d)(2) of the Act, the affected provision will be immediately invalidated, modified or stayed as required to effectuate the subject order upon written request of either Party ("Written Notice"). In addition, to the extent this Agreement is in effect in Illinois, the Parties agree that any ICC orders implementing the Illinois Law, including, without limitation, the ICC Rates, shall automatically apply to this Agreement (for the state of Illinois only) as of the effective date of any such order(s) upon Written Notice, and as soon as practical thereafter, SBC Illinois shall begin billing the ICC Rates; provided, however, the Parties acknowledge and agree that no later than sixty (60) days from the Written Notice, the Parties will execute a conforming Amendment to this Agreement so that the Agreement accurately reflects the ICC Rates and SBC Illinois will issue any adjustments, as needed, to reflect that the ICC Rates became effective between the Parties as of the effective date of the applicable ICC order(s). With respect to all other Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications required to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretations of the actions required or the provisions affected by such order shall be handled under the Dispute Resolution Procedures set forth in this Agreement.

TO: **CONTRACT MANAGEMENT**
FOUR BELL PLAZA, 9TH FLOOR
DALLAS, TX 75202

1-800-404-4548

FROM: ______________________________

FAX: ______________ TELEPHONE: ______________ email: ______________

Reciprocal Compensation Amendment (Adopting FCC's Interim ISP Termination Compensation Plan)
ORDER NOTIFICATION

AMENDMENT PREPARATION INFORMATION

CLEC LEGAL NAME ______________
MAILING ADDRESS – STREET ______________
CITY/STATE/ZIP CODE ______________
TELEPHONE NUMBER ______________
STATE OF INCORPORATION (IF APPLICABLE) ______________
OCN/AECN ______________

OFFICIAL NOTICE TITLE & NAME ______________
OFFICIAL NOTICE ADDRESS (CANNOT BE P.O. BOX) ______________
OFFICIAL NOTICE TELEPHONE NUMBER ______________
OFFICIAL NOTICE CITY/STATE/ZIP ______________

APPLICABLE STATE(S) OF AMENDMENT (AR, IL, MI) ______________

Please select which Amendment:
1) ISP-Bound Traffic and Federal Communications Act Section 251(b)(5) Traffic at FCC Interim Rates ______________
2) ISP-Bound only Traffic at FCC Interim Rates ______________

Please list the type of agreement and entity name, i.e., "Interconnection – ABC Company" this will amend. ______________

Please note that the failure to provide accurate and complete information may result in return of the form to you and a delay in processing your request.

Report any trouble with FAX transmission to 214-464-1832